IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Bail Appl..No. 7150 of 2007()

CRIME NO. 117/07 OF KODENCHERRY POLICE STATION

PETITIONERS/ACCUSED 1 & 2:

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1. ABOOBACKER, S/O. ABDULLA,
VALAKKKUNDIL, NELLIPOYIL AMSOM, MURAMPATHI.

2. SAINUDDIN, S/O. ALI,
EREKKAL, NELLIPOYIL AMSOM, MURAMPATHI.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7150 of 2007

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Dated this the 29th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered alleging offences punishable, inter alia, under Sections 324 and 308 r/w. 149 I.P.C. There is a dispute between two groups relating to the administration of a Mosque. The precise dispute is about the appointment of a Musaliar. On account of this animosity the petitioners, along with others, were allegedly members of an unlawful assembly, tho attacked the victim and caused injuries on him. The alleged occurrence took place on 1.11.2007. Crime was registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They were not aggressors, but were victims of aggression. A counter case has also been registered. Wooden reapers are the weapons allegedly used by

the petitioners. In the counter case, the defacto complainant who has been arrayed as accused, as also others used stones to commit the offence. According to the learned counsel for the petitioners, the allegation under Section 308 I.P.C. only reveals the prejudice and bias of the Investigating Officer. There is no reason to include Section 308 I.P.C. That has been included only to ensure maximum vexation and harassment to the petitioners. It is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

3. The learned Prosecutor has read to me the nature of injuries described in the wound certificate. He concedes that there is a counter case. The learned Prosecutor does not oppose the application, but only submits that appropriate conditions may be imposed in the interest of a fair, efficient and expeditious investigation.

4. Having considered all the relevant inputs, I am persuaded to agree that directions under section 438 Cr.P.C. can be issued in favour of the petitioners.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 6.12.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 7.12.07 and 8.12.2007. During this period, the investigators shall be at liberty to interrogate the petitioners in custody and take all necessary steps in connection with the investigation. Thereafter they shall appear before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of one month and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 6.12.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to their surrender on 6.12.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 6.12.2007.

(R. BASANT)
Judge

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